IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Con.Case(C).No. 1311 of 2007(S)

AGAINST THE JUDGEMENT/ORDER IN WPC.34519/2006 Dated 19/01/2007

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PETITIONER/ PETITIONER IN WPC

PRASAD KALLARACKAL ABRAHAM, AGED 48,
S/O.ABRAHAM, KALLARACKAL PUTHEN VEEDU,
THEKKEKARA, MAVELIKARA, REP.BY HIS AUTHORIZED
LEGAL REPRESENTATIVE C.O.JOHNY, AGED 46,
S/O.JACOB, KALLARACKAL DEVADANAM, PUTHIYAKAVU,
MAVELIKARA.

BY ADV. SRI.R.KRISHNA RAJ

RESPONDENT/ RESPONDENT :

VIJAYAKUMAR, S/O. NOT KNOWN TO THE PETITIONER, AGED NOT KNOWN TO THE PETITIONER, SECRETARY, MAVELIKARA MUNICIPALITY, MUNICIPAL OFFICE, MAVELIKARA, REPRESENTED BY THE SECRETARY.

BY ADV. SRI.P.A.AHAMMED

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

Cont. Case (C). NO. 1311 OF 2007

Dated this the 14th day of November, 2007

J U D G M E N T

The grievance voiced by the petitioner through contempt case seems to be genuine. Under Annexure A-1 judgment of this Court petitioner was permitted to produce documents in support of his claim that he is having exclusive ownership over the property upon which the building is now proposed to be constructed.

2. According to the petitioner, there were two co-owners to the property, himself and his brother. Therefore, a suit for partition was filed in which a compromise decree was passed. Petitioner, pursuant to Annexure A1 judgment, produced a copy of the compromise decree (which incorporates the terms of the compromise petition as well as an NOC order from his brother) as is evident from Ext.P2 produced in the writ petition. The Municipality, it appears on legal advice, insisted that the petitioner shall also produce the final decree and judgment. The stand of the Municipality, according to me, is too technical for receiving acceptance. After all, there were only two co-owners and the partition suit was compromised between

them and the petitioner has produced the compromise decree, which incorporates the terms of the compromise. The petitioner also produced the NOC from his brother, the other co-owner.

3. In the affidavit filed by the respondent, he has tendered his unconditional apology for not having complied with the directions. The apology is accepted.

The contempt case is disposed of with a direction to the respondent to consider and pass orders on petitioner's application for licence relying on the certified copy of the compromise decree and the NOC produced by the petitioner against Ext.P2, without insisting on production of final decree or judgment. This, the respondent shall do at the earliest, at any rate, within two weeks from the date of receipt of a copy of this judgment.

PIUS C. KURIAKOSE,, JUDGE

vps